



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 25, 2013

Approved

Date

12/4/13

COUNCIL DISTRICT: 4

SUBJECT: APPROVE GENERAL FUND APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS RELATED TO THE PUBLIC ART AT BERRYESSA BAY AREA RAPID TRANSIT (BART) STATION, AND DIRECT CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH VALLEY TRANSPORTATION AUTHORITY (VTA) AND AN ARTIST TO DESIGN, FABRICATE AND INSTALL A PUBLIC ARTWORK FOR THE BERRYESSA BART STATION

RECOMMENDATION

- (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments to the General Fund:
 - (1) Establish a City-Wide appropriation to the Office of Economic Development for the BART Public Art Design and Construction Management Project in the amount of \$90,000; and
 - (2) Increase the estimate for Revenue from Local Agencies in the amount of \$90,000.
- (b) Adopt a resolution authorizing City Manager to negotiate and execute a three-party agreement with VTA and the artist to design, fabricate and install a public artwork for the Berryessa BART station in an amount not to exceed \$380,000 over the term of the agreement subject to appropriation of funds by City Council in subsequent fiscal years.

OUTCOME

The recommended appropriation actions will recognize and make available \$90,000 in 2013-2014, which will allow the City, on behalf of the VTA, to support the development of public art enhancements for the Berryessa BART Station. This work reinforces the City's cultural plan goal of integrating high impact public art and design throughout the community. Approval of subsequent year appropriations will allow the continued development of the artwork and project coordination by the City on behalf of VTA/BART.

BACKGROUND

In February 2011, the City Council adopted *Cultural Connection: San Jose's Cultural Plan for 2011-2020*. One of the recommendations in *Cultural Connection* is to "integrate high impact public art and urban design throughout the Community." The Office of Cultural Affairs (OCA), a division of the Office of Economic Development, has built a partnership with VTA/BART that will help achieve that goal through development of site-specific public art at the Berryessa BART station.

The City and VTA entered into a Master Agreement on June 22, 2010 setting forth the framework for the construction of the BART extension in San Jose. The Master Agreement contemplated subsequent cooperative agreements to address project specific issues. On November 27, 2012, the City Council approved that the City enter into the Cooperative Agreement No. 8 under the Master Agreement for the design, construction, and reimbursement for project oversight relating to the public art component of the BART extension to Berryessa in an amount not to exceed \$480,000. Per the cooperative agreement, these funds will be paid on a reimbursable basis by VTA to the City; therefore, pending City Council approval, funds will be pro-rated and appropriated over this fiscal year and the following three fiscal years based on estimated invoicing by the City for project oversight and artist payments. The projected life of the contract is through 2017.

The agreement addresses the implementation of public art as part of the Berryessa extension and includes the following elements:

- City of San Jose shall be the lead agency responsible for managing the selection, contract administration, and payment of the artist contract not to exceed \$380,000. The City's internal administrative costs are not to exceed \$100,000. The maximum amount of the payment to City by VTA shall not to exceed \$480,000.
- The \$480,000 amount paid by VTA to the City includes City's internal administrative costs for managing the public art process, design costs, fabrication, and delivery to the Berryessa Station site.
- City staff will coordinate the artist selection process and obtain VTA approval of recommended artist.
- City will include VTA in all phases of the design review and community outreach and shall obtain written approval of the design concept prior to giving notice to proceed.

- City will manage the installation of the artwork in coordination with VTA's construction contractors.

ANALYSIS

The cooperative agreement facilitates public art integration within the Berryessa Station and the timely completion of the BART project currently under construction.

It is estimated that the \$480,000 will be expended over a four-year period as follow:

Purpose	2013-2014	2014-2015	2015-2016	2016-2017	Total
Project Delivery (staff & expenses)	\$40,000	\$30,000	\$20,000	\$10,000	\$100,000
Artist Design/Build Contract	\$50,000	\$168,000	\$130,000	\$32,000	\$380,000
Total	\$90,000	\$198,000	\$150,000	\$42,000	\$480,000

City will invoice VTA and funds will be received by City on a reimbursable basis for City staff costs related to project delivery expenses. Additionally, VTA will be invoiced and funds will be received for the Artist Design/Build contract on a reimbursable basis based on contract milestones. It is anticipated that the artist selection process including the development of the contract will be completed by March 2014.

The artist will be selected through City's standard public art selection process including an open call for artist (RFP) followed by a selection process involving project stakeholders including VTA, the station design architect, community representatives and arts professionals. The artwork will serve as an iconic and welcoming element to the station for BART riders and the community that is expected to develop around this station. The agreement will be a three-party agreement between City, VTA and the selected artist for the design, fabrication, and installation of the public artwork at the Berryessa BART station. City will be responsible for project oversight and disbursement of funds to the artist on behalf of VTA. Artist will be paid upon meeting milestones related to the design and fabrication.

EVALUATION AND FOLLOW-UP

Updates on the projects developed with the Cultural Affairs Special Project Fund will be reported to the City Council as part of the Public Art Program's annual report to the City Council and through regular updates to the Community and Economic Development Committee, Arts Commission and Public Art Committee. Staff will bring forward project appropriation and funding source recommendations for City Council approval in subsequent years until the completion of the project, slated for 2017.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The recommended actions do not meet any of the above criteria; however, this memorandum will be posted on the City's website for the December 17, 2013 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Department of Transportation.

FISCAL/POLICY ALIGNMENT

This project aligns with the City's Economic Development goal of advancing Downtown San Jose as Silicon Valley's cultural center. It also aligns with the Council-adopted *Cultural Connection: San Jose's Cultural Plan for 2011-2020* and the goals of high impact public art and urban design.

COST SUMMARY/IMPLICATIONS

The total maximum reimbursement by VTA to the City of San Jose for project oversight (\$100,000) and artist contract (\$380,000) relating to the public art component of the BART extension to Berryessa is not to exceed \$480,000.

The recommended actions will establish a City-wide appropriation for the BART Public Art Design and Construction Management project and recognize corresponding Revenue from Local Agencies of \$90,000 as part of the reimbursements from VTA anticipated for 2013-2014. The remainder of the funding for staffing, expenses, and project delivery will be brought forward as part of subsequent budget actions in 2014-2015 through 2016-2017.

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BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Amt. of Recommendation	2013-2014 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)*
001	New	BART Public Art Design and Construction Management	\$90,000	N/A	N/A

CEQA

EIR, Resolution No. 76275.

/s/

KIM WALES
Director of Economic Development
Chief Strategist

Margaret McCahan for

JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the General Fund in the fiscal year 2013-2014 monies in excess of those heretofore appropriated there from, said excess being at least \$90,000.

Margaret McCahan for

JENNIFER A. MAGUIRE
Budget Director

For questions, please contact Kerry Adams Hapner, Director of Cultural Affairs, at (408) 793-4333.